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8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4232

12 **SARA NICOLE MELENDEZ**

**A C C U S A T I O N**

13 9630 Goodbee Street  
Pico Rivera, CA 90660

14 Pharmacy Technician Registration  
No. TCH 103029

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy.
- 21 2. On or about June 17, 2010, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 103029 to Sara Nicole Melendez (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein, but expired on April 30, 2012, and has not been renewed.

25 **JURISDICTION**

- 26 2. This Accusation is brought before the Board under the authority of the following  
27 laws. All section references are to the Business and Professions Code, unless otherwise indicated.

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## STATUTORY PROVISIONS

3. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

4. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

1 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
3 whether the act is a felony or misdemeanor or not.

4 ....

5 (j) The violation of any of the statutes of this state, or any other state, or of the United  
6 States regulating controlled substances and dangerous drugs.

7 ....

8 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
9 of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
11 substances or of a violation of the statutes of this state regulating controlled substances or  
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
14 The board may inquire into the circumstances surrounding the commission of the crime, in order  
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
19 of this provision. The board may take action when the time for appeal has elapsed, or the  
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
24 indictment."

### 25 **REGULATORY PROVISIONS**

26 7. California Code of Regulations, title 16, section 1770 states, in pertinent part:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license  
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
3 licensee or registrant to perform the functions authorized by his license or registration in a manner  
4 consistent with the public health, safety, or welfare."

### 5 **COST RECOVERY**

6 8. Section 125.3 states, in pertinent part, that the Board may request the administrative  
7 law judge to direct a licensee found to have committed a violation or violations of the licensing  
8 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
9 case.

### 10 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

11 9. "Heroin," is a schedule I controlled substance as defined in Health and Safety Code  
12 section 11054, subdivision (c)(11) and is categorized a dangerous drug pursuant to section 4022.

### 13 **FIRST CAUSE FOR DISCIPLINE**

#### 14 ***(Conviction of a Substantially Related Crime)***

15 10. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and  
16 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,  
17 Respondent was convicted of a crime substantially related to the qualifications, functions, and  
18 duties of a pharmacy technician.

19 a. On or about On or about May 16, 2011, after pleading guilty, Respondent was  
20 convicted of one felony count of violating Title 21, United States Code section 843, subdivision  
21 (b) [Use of a Communication Facility in Committing a Felony Drug Offense] in the criminal  
22 proceeding entitled *United States of America vs. Sara Melendez* (Dist. Ct., 2011, No. CR 10-  
23 00241(B)-RGK). The Court placed Respondent on three years probation and ordered Respondent  
24 to complete 100 hours of community service and submit to random monthly drug testing.

25 b. The circumstances surrounding the conviction are that on or between March 31, 2009  
26 and April 2, 2009, Respondent participated in coded telephone calls with others to facilitate the  
27 smuggling of heroin into various California prisons.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 ***(Drug Related Conviction)***

3 11. Respondent is subject to disciplinary action under section 4301, subdivision (j), on  
4 the grounds of unprofessional conduct, in that, on or about May 16, 2011, Respondent was  
5 convicted of a crime involving a controlled substance/dangerous drug. Complainant refers to, and  
6 by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs a  
7 and b, inclusive, as though fully set forth herein.

8 **THIRD CAUSE FOR DISCIPLINE**

9 ***(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)***

10 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
11 that, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or  
12 corruption with the intent to substantially benefit herself, or substantially injure another.  
13 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
14 paragraph 10, subparagraphs a and b, inclusive, as though fully set forth herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 ***(Unprofessional Conduct)***

17 14. Respondent is subject to disciplinary action under section 4301, in that, Respondent  
18 committed acts of unprofessional conduct. Complainant refers to, and by this reference  
19 incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully.

20 **PRAYER**

21 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Board issue a decision:

23 1. Revoking or suspending Pharmacy Technician Registration No. TCH 103029, issued  
24 to Sara Nicole Melendez;

25 2. Ordering Sara Nicole Melendez to pay the Board the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED:

3/21/13



VIRGINIA K. HEROLD  
Executive Officer  
Board of Pharmacy  
State of California  
*Complainant*